

1 GEORGE J. TICHY II, Bar No. 041146  
 2 MICHAEL F. MCCABE, Bar No. 111151  
 3 MICHELLE R. BARRETT, Bar No. 197280  
 KIMBERLY L. OWENS, Bar No. 233185  
 4 LITTLER MENDELSON  
 A Professional Corporation  
 5 650 California Street, 20th Floor  
 San Francisco, California 94108  
 Telephone: (415) 433-1940  
 Facsimile: (415) 399-8490  
 6 E-mail: gtichy@littler.com, mmccabe@littler.com,  
 mbarrett@littler.com, kowens@littler.com

7 Attorneys for Defendants

8  
 9 HSBC MORTGAGE CORPORATION (USA) and  
 HSBC BANK USA, N.A.

10  
 11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie  
 14 Marie Shearn, individually, on behalf of all  
 others similarly situated, and on behalf of  
 15 the general public,

16 Plaintiffs,

17 v.  
 18 HSBC Mortgage Corporation (USA);  
 HSBC Bank USA, N.A.; and DOES 1  
 through 50, inclusive,

19 Defendant.

20 Case No. C 07 2446 MMC [ECF]

21  
**DECLARATION OF GLORIA LIN IN  
 OPPOSITION TO PLAINTIFFS' MOTION  
 FOR CLASS CERTIFICATION UNDER  
 FED. R. CIV. P. 23**

22 Date: October 10, 2008  
 Time: 9:00 a.m.  
 Courtroom: 7 (19th Floor)  
 Judge: Hon. Maxine M. Chesney

23 I, Gloria Lin, hereby declare and state:

24 1. I have personal knowledge of the facts set forth below. If called as a witness,  
 I would testify to the following.

25 2. Although I go by the name of "Gloria Lin" professionally, I am listed in  
 HSBC Mortgage Corporation (USA)'s records as "Shu Hua Graves."

26 3. I have approximately seven and one-half years of experience in mortgage  
 sales. I am currently employed by HSBC Mortgage Corporation (USA) ("HMCU") as a Retail

1 Mortgage Lending Consultant. I have been employed by HMCU since February 19, 2007. I am  
 2 assigned to the Southern California Region of HMCU. My manager is Amy Young.

3       4. In my job, I sell loans to residential clients. HMCU does not have any  
 4 required procedure for how to make sales; how I get business is up to me. I treat my job as my own  
 5 business where I work independently and use my discretion to meet my own personal goals.

6       5. HMCU does not require me to work any number of hours. I choose how  
 7 much to work based on how much income I want to earn. I have no set work schedule or hours. I  
 8 do not have an office that I am required to work from. I decide when and where to work.

9       6. Based on my own experience at HMCU, my observations of my co-workers,  
 10 and discussions with my co-workers, I can say that the amount of time that HMCU lending  
 11 consultants work varies. Some people work faster than others and are more organized and able to  
 12 sell loans faster. Some lending consultants do not find many clients, and some lending consultants  
 13 have many clients.

14       7. Every day on my job is different. My work hours vary every day. Sometimes  
 15 I begin working very early in the morning, and sometimes I choose to start working later. Some  
 16 days I work late, and some days I finish working earlier. If I decide to work less in a particular day  
 17 or to run a personal errand, I have that flexibility. I just need to ensure that the needs of my clients  
 18 are met.

19       8. How busy I am also varies based on market conditions. I am more busy  
 20 during the summer and right after tax season because those are periods when more people purchase  
 21 houses. I also make more sales when interest rates are lower.

22       9. I work independently with little supervision. I do not see my manager very  
 23 often. I communicate with my manager by cell phone or emails only when questions arise, or there  
 24 is otherwise a need to communicate.

25       10. The training I received from HSBC Mortgage included a one week training  
 26 session in Buffalo, New York at the beginning of my employment. After that, my manager, Amy  
 27 Young, answered questions I had. Then, I immediately began working to sell loans. There are also  
 28 on-line training programs for me to do if I chose to do them, although a few training sessions are

1 mandatory. These training sessions do not take up very much time. I am not required to attend any  
 2 outside training sessions, and I have not chosen to do any outside training.

3       11. We also have divisional meetings by telephone about once a month. The  
 4 agenda for these meetings includes information about new products and market conditions.  
 5 Obtaining this information helps me with my sales because it is important to me knowledgeable  
 6 about the mortgage products we offer.

7       12. I receive referrals from two branches of HSBC Bank USA, N.A. I am the  
 8 designated HMCU employee to receive referrals from the branches located in San Gabriel and  
 9 Pasadena, California. HMCU does not require that I spend any particular amount of time at the bank  
 10 branches, and I do not have any set hours at the banks. Instead, I am in and out of these branches  
 11 based on when and where I schedule appointments with clients. The bankers at these branches have  
 12 my cell phone number and email address (I carry a Blackberry) and contact me when they have a  
 13 client to refer to me. I obtain about 50 to 60% of my sales from referrals made by bankers at these  
 14 two branches. I also refer my clients to HSBC Bank for their banking and investment needs, so it is  
 15 a "win win" situation.

16       13. I also obtain 40 to 50% of my sales from sources other than HSBC Bank. A  
 17 major source of business for me is referrals from other clients. I also get referrals from real estate  
 18 agents and mortgage brokers. My other sources of business are return clients and friends. Word of  
 19 mouth is my best form of advertising.

20       14. HSBC Mortgage Corporation does not require me to obtain business in any  
 21 particular way. I am not required to attend conventions or business development events, and I  
 22 generally do not attend networking events because I am able to obtain a lot of business from other  
 23 sources.

24       15. I schedule appointments directly with clients. I like to meet with clients in  
 25 public places for safety reasons. I sometimes meet with clients at branches of HSBC Bank;  
 26 however, I also sometimes meet with clients at Starbucks or another public location. On occasion, I  
 27 meet with clients at their offices as well. I also meet with realtors or clients at realtors' offices about  
 28 5 or 6 times a year.

1           16. I spend more than 50% of my work time working with clients and engaging in  
 2 sales activities. I spend about half my time meeting with or talking to clients. I also spend a lot of  
 3 time communicating with clients about what needs to be done to close the loan, and ensuring that the  
 4 loan is closed.

5           17. It does not take me very long to complete loan applications. It only takes me  
 6 about 20 minutes per loan application.

7           18. I send completed loan applications to HSBC Mortgage Corporation's  
 8 underwriters in Buffalo, New York. After that, I work with clients to ensure that any conditions on  
 9 the loan approval are met, such as additional documents that need to be submitted.

10          19. The type of loan I usually sell are premier loans, which include loans to high  
 11 net worth clients who have certain deposit amounts at HSBC Bank. My clients are primarily  
 12 residential. I principally sell "jumbo" loans, which are mortgages that are \$417,000 or higher. I also  
 13 sell some conforming loans of lesser amounts, but I am not familiar with and do not sell FHA or  
 14 other low-income loans. It has always been up to me to decide what types of loan products and/or  
 15 types of clients on which to focus my activities.

16          20. In working to sell loans to clients, I perform an independent analysis to make  
 17 recommendations to my clients about what mortgage product they can qualify for and what  
 18 mortgage product will best suit their needs. I assess clients' financial situations, including income  
 19 and employment and credit history. I also assess clients' goals, such as how long they are planning  
 20 to hold on to the property and their desired loan amounts and interest rates. I ask questions to find  
 21 out if clients are aggressive or conservative with their investments. Based on this information, I use  
 22 my judgment and discretion to determine what type and amount of mortgage the client will be able  
 23 to qualify for and what product will meet the client's needs, and I make recommendations to the  
 24 client and present the client with choices.

25          21. I am permitted to take meal and rest breaks whenever I want. No one has ever  
 26 told me that I cannot take breaks or otherwise discouraged me from taking a break. I decide when to  
 27 take breaks, and I decide how long of a break to take. Sometimes, I take 1 or 2 hours for lunch and  
 28 sometimes I take only 10 or 15 minutes; it is my choice. I am also free to run personal errands or

1 attend personal appointments as needed. No one at HSBC Mortgage checks when I am working or  
 2 not working because, as I mentioned previously, I work independently.

3       22. I am paid on a draw and incentive commission basis. I receive a certain  
 4 percentage of each loan I sell that closes. I received a copy of the commission plan at the beginning  
 5 of the employment. I signed and agreed to the commission plan.

6       23. The first six months of my employment I received a forgivable draw. Now, I  
 7 am paid every two weeks, but only receive my incentive commissions at the end of each month. My  
 8 first paycheck of the month is a draw that is later subtracted from my incentive commissions. The  
 9 amount of my incentive commissions is not determined until the end of the commission period. I  
 10 receive a report from my manager that details the amount of the mortgages I sold that were funded  
 11 and the amount of my commission. I have the opportunity to tell my manager if my incentive  
 12 commissions have been calculated incorrectly, but the calculations have always been correct under  
 13 the incentive commission plan.

14       24. My income at HMCU is more than \$100,000 per year. I have already earned  
 15 about \$270,000 in commissions this year. To be very successful in this business, I believe it is  
 16 necessary to be out in the field developing business rather than sitting in a fixed location or behind a  
 17 desk, to create and maintain good relationships with bankers and other sources of referrals and to be  
 18 available to your clients.

19       25. HSBC Mortgage requires lending consultants to collect application fees of  
 20 \$325 for conforming loans. Jumbo loans have an appraisal fee of \$750, which is used to pay for the  
 21 property appraisal. If I do not collect the necessary fee, it is my own fault because HSBC Mortgage  
 22 has made it clear that I must collect the application fee up front by getting the client's credit card  
 23 information. If I forget to collect the fee, my manager sends me an email instructing me to collect  
 24 the fee, so it will not reduce the amount my monthly incentives commissions under the incentive  
 25 plan.

26       26. I received two written notices from the Plaintiffs' counsel about this lawsuit. I  
 27 also received one phone call from someone representing the Plaintiffs, who asked if I wanted to join  
 28 the lawsuit. I just said no. I do not want to join the lawsuit because I think the lawsuit is ridiculous.

1 This job is like having your own business. I love my job. I love the freedom of being able to work  
2 whenever and wherever I want. I do not want a 9 to 5 job. No one at HSBC Mortgage has ever  
3 pressured me to not join the lawsuit or told me I might lose my job if I join the lawsuit. It is my  
4 voluntary and personal choice not to join the lawsuit.

5 I declare under penalty of perjury under the laws of the State of California and the  
6 United States of America that the foregoing declaration is true and correct to the best of my personal  
7 knowledge. Executed this 19 day of September, 2008, in Temple City  
8 California.



GLORIA LIN

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C 07 2446 MMC [ECF]